

n. Prequalification to Bid, § 2.2-3705.6 (10):

- i. Provides an exemption for confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

o. Working Papers of the Mayor, § 2.2-3705.7(2):

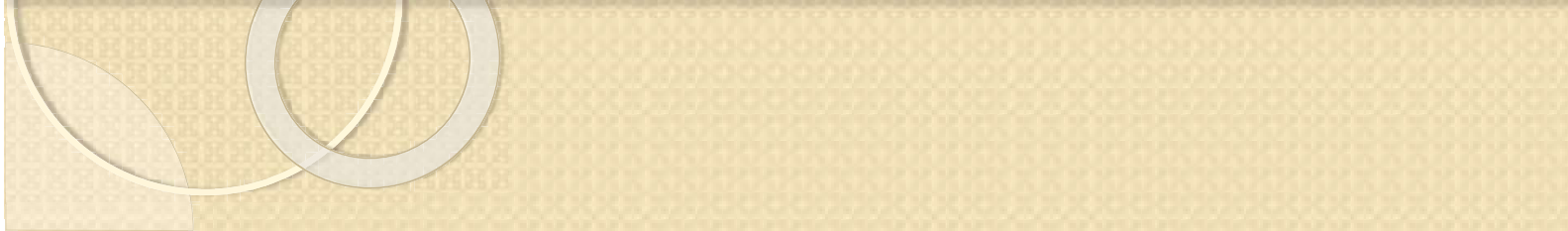
- i. Provides an exemption for “working papers,” i.e. any records prepared by or for the Mayor for his personal or deliberative use; does not apply to Office of CAO.
- ii. Documents that were previously public and outside of this exemption cannot be bundled into a set of exempt working papers without any additional analysis or revision.

NOTE: Working papers can lose their excludable designation if and when they are disseminated outside of Mayor’s “zone of privacy,” best understood as outside of those within the Office of the Mayor or, potentially, outside of that group initially privy to the record or with whom Mayor initially shared for purposes of his or her deliberation.

p. Utilities Account Information, § 2.2-3705.7(7):

- i. Provides exclusion for customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding (i.e. cannot exclude) the amount of utility service provided and the amount of money charged or paid for such utility service.

Meetings



What is a meeting?

- The presence of three or more members, or a quorum, if a quorum is less than three members, of a public body sitting as a body or assemblage AND
- The purpose of discussing or transacting the public business of that public body by those members.



What is an open meeting?

A meeting at which the public may be present.

Do you have to keep the door open?

- No, but it is probably a good idea unless doing so would disrupt the meeting.
- Do not lock the door.



What is a closed meeting?

A meeting from which the public is excluded.

When is a closed meeting permitted?

- Legitimate purposes are listed in section 2.2-3711(A).
- Legitimate purposes are often similar to, but do not match up exactly with, records exemptions.

What are some common legitimate purposes?

- Discussion of personnel matters concerning specific direct appointees—NOT general discussions of personnel policies or compensation matters that affect the members of the public body generally.
- Discussion of acquisition or disposition of real estate IF discussion in an open meeting would adversely affect bargaining position or negotiating strategy.
- Protection of privacy of individuals in personal matters not related to public business.

Common legitimate purposes (continued)

- Discussion of new business or expansion of business where no previous announcement has been made.
- Consultation with legal counsel concerning actual or probable litigation IF discussion in an open meeting would adversely affect negotiating or litigating posture.
- Consultation with legal counsel regarding specific legal matters requiring legal advice.

Common legitimate purposes (continued)

- Discussion of local government crime commissions where information that could identify informants who have been promised anonymity.
- Discussion of plans to protect public safety related to terrorist activity.
- Discussion of reports or plans related to security of a governmental facility, building or structure.

Common legitimate purposes (continued)

- Discussion of award of public contract involving expenditure of public funds IF bargaining position or negotiating strategy would be adversely affected.
- Discussion of information excluded from FOIA by section 2.2-3705.6(3)—i.e., economic development.

Procedure for closed meeting

- Motion to go into a closed meeting must:
 - Identify the subject matter;
 - State the purpose of the meeting; and
 - Cite the specific exemption from open meeting requirements—e.g., section 2.2-3711(A)(7) for legal advice.

Procedure for closed meeting (continued)

- General references are inadequate.
- The motion must be set forth in the minutes.
- We typically prepare the text of the motion for City Council and its committees.

MOTION

I move that the Public Safety Standing Committee of the City Council go into a closed meeting pursuant to section 2.2-3711(A)(1) of the Virginia Freedom of Information Act for the purpose of discussing, considering and interviewing prospective candidates for appointment by the Council as members of the Richmond Ambulance Authority.

Procedure for closed meeting

(continued)

- Once in the closed meeting, you must stay on topic.
- A public body may not take action—i.e., vote—in a closed meeting.
- Nonmembers may attend if the public body determines that they are necessary.
- Members of a public body may attend a closed meeting of a committee or subcommittee of that public body.

Procedure for closed meeting

(continued)

- At the end of the closed meeting, members must reconvene immediately in an open meeting to take a vote certifying that
 - Only public business matters lawfully exempted from open meeting requirements under FOIA and
 - Only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting.
- If you cannot certify, you must state what you think was improper about the closed meeting, and this statement must be recorded in the minutes.

Date: _____

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Public Safety Standing Committee of the City Council has convened in closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, section 2.2-3712 of the Code of Virginia requires a certification by this Committee that such closed meeting was conducted in conformity with Virginia law; NOW, THEREFORE,

BE IT RESOLVED:

That the Committee hereby certifies that to the best of each member's knowledge (i) only public business matters lawfully exempt from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Committee.

WITNESS the following vote of Committee members, as recorded below:

CERTIFYING:

DECLINING TO CERTIFY:

What is an electronic meeting?

- A meeting where a quorum of the members is not physically assembled and in which business is transacted through the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.
 - Telephone conference call[?]
 - E-mail[?]
 - Chat rooms or instant messaging[?]

When are electronic meetings allowed?

- When the Governor has declared a state of emergency IF
 - The catastrophic nature of the emergency makes it impracticable or unsafe to assemble a quorum in a single location AND
 - The purpose of the meeting is to address the emergency.
- In other words, they are almost never allowed.

When is participation by telephone or other audio or visual means allowed?

- The public body first must have adopted a written policy for such participation, including an approval process.
- You must notify the chair of a “personal matter” or medical condition that prevents your attendance.
- You must identify with specificity any “personal matter” that prevents your attendance.
- The public body must record in its minutes the specific nature of the “personal matter.”
- The public body must record in its minutes the remote location from which you called in.
- You can only call in twice in a calendar year due to a “personal matter.”

NOTE: AS OF JULY 1, If the Governor has declared a state of emergency as described in the previous slide, the preceding requirements do not apply.

What is not a meeting?

- A gathering or attendance of two or more members:
 - At any place or function where no part of the purpose is the discussion or transaction of any public business IF not called or prearranged with any purpose of discussing or transacting any business of the public body, or
 - At a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business.

Notice

- Must contain time, date, and location.
- Publication of notice by electronic means “encouraged,” but not required.
- For regular meetings:
 - Must be posted three working days before the meeting.
 - Must be posted (i) in the office of your clerk or administrator; (ii) in a prominent public location at which such notices are regularly posted, AND (iii) on the public body’s official government website.

Notice (continued)

- For special, emergency, or “continued” meetings:
 - Notice “reasonable under the circumstances”
 - “Contemporaneously” with the notice given the members of the body.
- Most likely, a “continued meeting” is a meeting that is continued to address an emergency or to conclude the agenda of a meeting for which proper notice was given.



Agenda Packets

At least one copy of the agenda and every document given to members of the body must be made available for public inspection at the same time the documents are given to the members.

Filming or recording by citizens

- It is allowed and cannot be prohibited.
- Public bodies may adopt rules concerning the placement and use of equipment to prevent interference with the proceedings.
- You cannot conduct a meeting in a place where such equipment is prohibited.

Minutes

- Minutes are required at all open meetings.
- Minutes are **not** required at closed meetings.
- Minutes generally are not required at meetings of “study commissions.”
- Minutes must be in writing.

Contents of minutes

- Date, time and location of the meeting.
- Members recorded as present and absent.
- “Summary of the discussion” on matters proposed, deliberated or decided.
- Record of any votes taken.

FOIA Council Advisory Opinions

- **AS OF JULY 1**, If you obtained an advisory opinion from the Freedom of Information Advisory Council and relied on it, you may introduce that opinion in court as evidence that you did not willfully and knowingly violate VFOIA

Violations and penalties

- Civil penalties imposed when violation is “willfully and knowingly made.”
- Civil penalties imposed on member “in his individual capacity.”
- Civil penalties:
 - First violation: **\$500 to \$2,000.**
 - Second or subsequent violation: **\$2,000 to \$5,000.**

New Penalties

- **AS OF JULY 1**, up to **\$100** per record that you could not provide because you altered or destroyed it in violation of then record retention schedules.
- **AS OF JULY 1**, up to **\$1,000** if you vote to certify a closed meeting in violation of Va. Code § 2.2-3712(D) (discussed earlier).
 - Mitigating factors include:
 - Attorney General opinions
 - Court cases
 - Freedom of Information Advisory Council opinions

QUESTIONS??

